SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1934

No.

R. R. GROVEY, PETITIONER,

vs.

ALBERT TOWNSEND.

ON PETITION FOR A WRIT OF CERTIORARI TO THE JUSTICE COURT, PRECINCT NO. I, HARRIS COUNTY, TEXAS.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., NOV. 2, 1934.

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[fols. a, 1 & 2] [Caption omitted]

[fol. 3]

IN THE JUSTICE COURT, PRECINCT NO. 1, POSITION NO. 2, HARRIS COUNTY, TEXAS

No. 63,915

R. R. GROVEY, Plaintiff,

vs.

ALBERT TOWNSEND, Defendant

PLAINTIFF'S ORIGINAL PETITION—Filed Sept. 10, 1934

To the Honorable Justice of said Court:

Now comes the plaintiff, R. R. Grovey, and complaining of the defendant, Albert Townsend, respectfully shows to this Honorable Court as follows:

I

That the plaintiff, R. R. Grovey, is a natural born citizen and resident of the United States, State of Texas, and Harris County in said State, and has been such resident of Harris County, Texas, for a period of eighteen (18) years, next preceding the filing of this petition.

That the plaintiff, R. R. Grovey, is forty-four (44) years of age, is a member of the Negro race, has resided in voting precinct No. 85 in Harris County, Texas, for a period of four (4) years next preceding the holding of the statutory democratic primary election involved in this case; that plaintiff paid his poll tax for the year 1933 on the 31st day of January, A. D. 1934 as required by the laws of the state of Texas, and holds his official receipt No. 40712 therefor; that plaintiff is and was on July 9, 1934, a duly qualified elector under the laws of the United States and the state of Texas, and is and was on July 9, 1934, subject to none of the disqualifications provided for voting under the constitution and laws of the State of Texas; that plaintiff [fol. 4] is and was on July 9, 1934, a member of and a believer in the tenets of the Democratic Party.

II

That Article 3101 and Article 3102 of the Revised Civil Statutes of Texas provide as follows:

Art. 3101. (3084) Nominated at Primary

On primary election day in 1926, and every two years thereafter, candidates for Governor and for all other State offices to be chosen by vote of the entire State, and candidates for Congress and all district offices to be chosen by the vote of any district comprising more than one county, to be nominated by each organized political party that cast one hundred thousand votes or more at the last general election, shall, together with all candidates for offices to be filled by the voters of a county, or of a portion of a county, be nominated in primary elections by the qualified voters of such party. (Acts 1st C. S. 1905, p. 549.)

Art. 3102. (3086) Date of Primary

The fourth Saturday in July 1926, and every two years thereafter shall be general primary election day, and primary elections to nominate candidates for a general election shall be held on another day, except when specially authorized. No person shall be declared the nominee of any political party at any primary election for any State or District office unless he has complied with every requirement of all laws applicable to primary and other elections, [fol. 5] and has received a majority of all the votes cast at such primary elections for all candidates for such office. If at the general primary election for any political party, no candidate becomes the nominee for any State or district office under this article, a second primary election shall be held by such political party, in the State, or such district, or districts, as the case may be, on the fourth Saturday in August succeeding such general primary election, and only the name of the two candidates who receive the highest number of votes for any office for which nomination was made at the general election shall be placed on the official ballot as candidates for such office at such second primary. The second primary election shall be conducted according to the law prescribed for conducting the general primary election, and the candidates receiving a majority of all votes cast for the office to which they aspire shall be declared the

nominee for their respective offices. Any political party may hold a second primary election on the Fourth Saturday in August to nominate candidates for any county precinct office, where a majority vote is required to make nomination; but at such second primary election only the two candidates who received the highest number of votes at the general primary for the same office shall have their names placed upon the official ballot. Nominations of candidates to be voted for at any special election shall be made at a primary election at such time as the party executive committee shall determine, but no such committee shall ever have the power to make such nominations. All precincts in the same county and all counties in the same [fol. 6] district shall vote on the same day. Nominations of party candidates for offices to be filled in a city or town shall be made not less than ten days prior to the city or town election at which they are to be chosen, in such manner as the party executive committee for such city or town shall direct, and all laws prescribing the method for conducting county primary elections shall apply to them. (Id. Acts 4th C. S. 1918, p. 191.)

That pursuant to and in accordance with and in keeping with the mandatory requirements of the said articles 3101 and 3102, there was held on the 28th day of July, A. D. 1934, a statutory Democratic primary election, which was wholly statutory and governed by Title Fifty of the Revised Civil Statutes of Texas, and that the plaintiff, by reason of matters and things set out in this petition, had the legal right to vote in said election, and that said legal right to vote in said election, was and is protected and guaranteed by the 14th and 15th Amendments to the Constitution of the United States.

III

That the defendant, Albert Townsend, is and was on the 9th day of July, A. D. 1934, the duly elected, qualified and acting county clerk in and for Harris County, Texas, elected pursuant to Article 1935 and other pertinent provisions of the Revised Civil Statutes of the State of Texas, and as such county clerk, was on such day, and is now, and has been at all the times material in this law suit subject to

[fol. 7] Article 2956 of the Revised Civil Statutes of the State of Texas, which, as amended, reads as follows:

Art. 2956. Absentee Voting

Any qualified elector, as defined by the laws of this State, who expects to be absent from the County of his or her residence on the day of election may vote subject to the following conditions, to-wit: At some time, not more than twenty (20) days nor less than three (3) days, prior to the date of such election, such elector shall make his or her personal appearance before the Clerk of the County of his or her residence and shall deliver to such Clerk his or her poll tax receipt or exemption certificate entitling him or her to vote at such election, and said Clerk shall deliver to such elector one ballot which has been prepared in accordance with the law for use in such election, which shall then and there be marked by said elector apart and without the assistance or suggestion of any person, and in such manner as said elector shall desire same to be voted; which ballot shall be folded and placed in a sealed envelope and delivered to said Clerk who shall keep same so sealed, and who shall also keep said poll tax receipt or certificate open to the inspection of any person who may wish to examine or see same until the second day prior to said election; and said Clerk shall, on said second day, place the said poll tax receipt or certificate, together with the said envelope containing said marked ballot, in another envelope which shall then be mailed by said Clerk to the presiding Judge of the voting precinct in which said elector lives. Or, at some [fol. 8] time not more than twenty (20) days prior to the date of such election, such elector shall make his or her written application to the County Clerk of his or her County requesting a ballot, and shall send together with said application his or her poll tax receipt or exemption certificate, but in the event said elector does not have his or her receipt or certificate, the County Clerk is directed to procure from the Tax Collector a certificate in lieu of said receipts or exemption certificates. Such County Clerk receiving the application for a ballot, after verification shall mail a ballot to such elector, which ballot having been prepared in acordance with the law for use in such election, said envelope to be marked "Official Ballot for ——" giving elector's name. Such elector, upon receipt of said

ballot shall mark the same immediately, apart and without the assistance or suggestion of any other person, in such manner as said elector shall desire same to be voted, which ballot shall be folded and placed in a sealed envelope, prepared for the purpose, and mailed by such elector to the County Clerk of the County wherein such elector votes, who shall keep same so sealed, and who shall also keep said poll tax receipts or certificates open to the inspection of any person who may wish to examine or see same until the second day prior to said election; said Clerk shall on said day place the said poll tax receipt or certificate, together with the said sealed envelope containing said sealed ballot, in another envelope, which shall be by said [fol. 9] Clerk then mailed to the presiding Judge of the voting precinct in which said elector lives.

On the day of such election, and in the presence of the election officers, provided by the law, the presiding Judge shall, between the hours of two and three o'clock, open the envelopes containing said poll tax receipts, exemption receipts, and marked ballots, and publicly announce that the ballot of such named electors are proposed to be cast, at which time any person who desires to challenge said vote and the right of same to be cast, shall be heard to present such challenge, and if there be no challenge of same, said vote shall be cast and counted according to law; and if there be any challenge of such vote, legal cause for same shall be heard and decided according to the law provided in the case of such challenge.

In case no challenge is made, such poll tax receipt, after same is marked "voted" as provided by law, shall be mailed back to the said County Clerk. But in the case of challenge, such poll tax receipt together with affidavits relating thereto shall be mailed by said Judge of election of (to) the County Clerk of such County who shall keep same for thirty (30) days, and if no demand be made for the production of same before anybody or persons in authority within said time, said County Clerk shall deliver such receipt to the owners thereof. When voted, the Judge of election shall mark opposite the name of such absentee voter the word "Absentee."

The provisions of this Article shall apply to all elections, [fol. 10] including General, Special and Primary elections, except primary elections ordered by the executive commit-

tee of a political party to nominate candidates for a special election; provided, however, that the executive committee of a political party may at its option provide in ordering a special primary (primary) election to nominate candidates for a special election that any qualified voter who expects to be absent from the County of his residence on the day of the election may vote in accordance with the procedure under either of the methods prescribed in this Act at some time not more than ten days nor less than three days prior to the date of such election. (As amended Acts 1931, 42nd Leg. p. 180, ch. 105; Acts 1933, 43rd Leg. p. 5, ch. 4.)

IV

That on or about the 9th day of July, A. D., 1934 the plaintiff, R. R. Grovey, was a qualified elector as defined by the laws of Texas, and expected to be absent from Harris County, Texas, on July 28, A. D. 1934, and that he did on said date, which was not more than twenty days nor less than three days prior to said July 28, 1934 make his personal appearance before the defendant, Albert Townsend, Clerk of said County of Harris, State of Texas, as aforesaid, and then and there delivered to said defendant, Albert Townsend, County Clerk of Harris County, Texas, his said poll tax receipt mentioned above, and then and there requested said defendant, Albert Townsend, County Clerk of the Harris County, Texas, to deliver to this plaintiff one ballot which had been prepared in accordance with law for use in the statutory Democratic primary election, held on [fol. 11] July 28, 1934, in order that plaintiff might cast an absentee ballot in said election as provided by said Article 2956 of the Revised Civil Statutes of Texas; that the said Albert Townsend was on the said date when this plaintiff appeared before him as aforesaid, conducting absentee voting for said statutory Democratic primary election held on July 28, 1934, in accordance with the provisions of said Article 2956 of the Revised Civil Statutes of the State of Texas.

V

That the defendant, Albert Townsend, although well knowing all of the facts and matters set out above, did refuse on said date to deliver to this plaintiff one ballot which had been prepared in accordance with the law for use in

said statutory Democratic primary election held on July 28, 1934, and that the said defendant, Albert Townsend, is a statutory officer in charge of absentee voting in the said election, and that the said Albert Townsend did refuse to permit this plaintiff to have, or to mark such ballot, or to vote, or to cast an absentee ballot in said election as authorized and required by said Article 2956 of the Revised Civil Statutes of Texas; that the action of the said defendant, Albert Townsend, in refusing to deliver to this plaintiff one such ballot, and in refusing to permit this plaintiff to receive or to mark one such ballot and in refusing and preventing and depriving this plaintiff of his right to vote and cast an absentee ballot in said statutory Democratic primary election held on July 28, 1934, was willful, wrongful, unlawful, and in violation of the rights of plaintiff as hereinafter set forth, and that by reason of such wrong-[fol. 12] fully, willful and unlawful acts of the defendant, Albert Townsend, this plaintiff has been damaged in the sum of ten dollars ($10.00), and said acts of defendant, Albert Townsend, violated plaintiff's rights under the 14th and 15th Amendments to the Constitution of the United States.

VI

That the defendant, Albert Townsend, at the time he refused to permit this plaintiff to cast said absentee ballot, and prevented the plaintiff from casting said absentee ballot, on or about the 9th day of July, A. D. 1934, did then and there give to this plaintiff as his reason and justification for such denial of plaintiff's legal right to vote in said election, the following matters and things, to-wit:

First. A certain purported resolution, passed and adopted by a certain commission or administrative board or agency of government or officials of the State of Texas, created under and by Article 3167 of the Revised Civil Statutes of Texas, and known as the State Democratic Convention of Texas. Said resolution was adopted on the 24th day of May, 1932, and reads as follows:

"Be it resolved, that all white citizens of the State of Texas who are qualified to vote under the Constitution and the laws of the state shall be eligible to membership in the Democratic party and as such entitled to participate in its deliberations."

Second. Certain instructions, which the said defendant, Albert Townsend, claimed he had received from a certain [fol. 13] state commission or administrative board or agency of government or officials of the State of Texas, created by Article 3118 of the Revised Civil Statutes of Texas and known as the County Democratic Executive Committee of Harris County, Texas, by which instructions, said defendant, Albert Townsend, advised this plaintiff that he had been instructed and advised that Negro voters and electors otherwise qualified had no legal right to vote or cast absentee ballots in said election, solely and only on account of their race and color as Negroes, and that since plaintiff was a member of the Negro race, said defendant, Albert Townsend, advised this plaintiff that solely and only because he was a Negro, he could not deliver to plaintiff an absentee ballot and was compelled to prevent plaintiff from casting an absentee ballot, or otherwise voting an absentee vote in said statutory Democratic primary election held on July 28, 1934.

That said purported reasons and justifications were and are no legal excuse for said wrongful and unlawful acts of the defendant in depriving this plaintiff of his legal right to cast an absentee ballot in said statutory Democratic primary elections, and that said wrongful and unlawful acts of the defendant, Albert Townsend, as well as the said reason and justification for said acts constitute a violation of plaintiff's rights under the 14th and 15th Amendments to the Constitution of the United States in that delegates of the power of the State of Texas have discharged their official functions in such a way as to discriminate against [fol. 14] plaintiff on account of his race and color alone, and thereby have denied to this plaintiff the due process of law and the equal protection of laws guaranteed to this plaintiff by the said 14th Amendment to the Constitution of the United States. The said delegates of the state's power have also used their said official functions in such a way as to abridge the right of plaintiff to vote, which is guaranteed to him against abridgment by the 15th Amendment to the Constitution of the United States.

VII

That the above quoted resolution of the State Democratic Convention of Texas and the above mentioned instructions

given to the defendant by the County Democratic Executive Committee of Harris County, Texas, are further void and no legal defense or justification for the wrongful and unlawful acts of defendant in depriving this plaintiff of his legal right to vote, for the following reasons, to-wit:

That Article 3107 of the Revised Civil Statutes of Texas as amended now provides as follows:

"Every political party in this State through its State Executive Committee shall have the power to prescribe the qualifications of its own members and shall in its own way determine who shall be qualified to vote or otherwise participate in such political party; provided that no person shall ever be denied the right to participate in a primary in this State because of former political views or affiliations or because of membership or non-membership in organizations other than the political party." (Acts 1927, 40th Leg. 1st C. S. p. 193, ch. 67, § 1.)

[fol. 15] That the Supreme Court of Texas has held in the case of Love v. Wilcox, 119 Texas 256, 28 S. W. (2nd) 515 that the said article 3107 is valid and constitutes a prohibition against making former political affiliations or membership in organizations other than the political party a basis for excluding otherwise qualified voters from participating in primary elections in the State of Texas. That by upholding the validity of said Article 3107, the State of Texas has destroyed the untrammeled power of the managers of statutory primary elections in Texas to fix the qualifications for voting or other participation therein and has destroyed the one historical test of party regularity and membership, namely the support of party nominees in past elections.

But that the State of Texas, through a decision of the Supreme Court of Texas, styled Bell et al. v. Hill et al., motion number 11520, decided July 20, 1934, and not yet officially reported, has upheld the validity of the above quoted resolution of the State Democratic Convention of Texas, and the above mentioned instructions of the County Democratic Executive Committee of Texas as a valid exercise of the alleged inherent power of the managers of primary elections in Texas to make race and color a basis of excluding otherwise qualified voters from participation in such elections. That by setting up a discrimination in

granting its protection between classifications of former political affiliations and membership in other organizations than the political party and the classification of race and color, the State of Texas has denied to this plaintiff and [fol. 16] to all other qualified Negro voters the equal protection of the laws and the due process of laws, which are guaranteed by the 14th Amendment to the Constitution of the United States, and has abridged the right of plaintiff and all other qualified Negro voters to vote, in violation of the provisions of the 15th Amendment to the Constitution of the United States.

That in the said case of Bell et al. v. Hill et al., the Supreme Court of Texas did hold that the right of the managers of statutory primary elections in Texas to exclude plaintiff and other qualified Negro voters from voting in such election was guaranteed and protected to such party managers by Sections 2 and 27 of the Bill of Rights (Article 1) of the Constitution of the State of Texas which read as follows:

"Sec. 2. All political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit. The faith of the people of Texas stands pledged to the preservation of a Republican form of government, and, subject to this limitation only, they have at all times the inalienable right to alter, reform or abolish their government in such manner as they may think expedient."

"Sec. 27. The citizens shall have the right, in a peaceable manner, to assemble together for their common good; and apply to those invested with the powers of government for redress of grievances or other purposes, by petition, address or remonstrance."

That as so construed, said section 2 and 27 of the Bill of Rights of Texas are void as denying to the classification of [fol. 17] race and color the protection which is guaranteed by said Article 3107 of the Revised Civil Statutes of Texas, to the classifications of past party affiliations and membership or non-membership in organizations other than the political party.

That by reason of all of the above, plaintiff has been denied the equal protection of the laws, and the due process of law guaranteed to him by the 14th Amendment to the

Constitution of the United States, and plaintiff's right to vote guaranteed to him by the 15th Amendment to the Constitution of the United States, has been abridged, and that plaintiff's said constitutional rights have been denied to him by the State of Texas and by agencies vested with the State's power.

Plaintiff further alleges that by a consistent course of statutory enactment and judicial decisions, since the original passage of the statutory primary election laws of Texas in 1903, the State of Texas has deprived the managers of such elections of all power to fix qualifications for voting therein, inconsistent with the qualifications for electors provided in the constitution and laws of the State of Texas, except in the one instance where the party managers have been authorized and permitted and protected by said course of legislative enactment and judicial decisions in excluding Negroes from voting in said statutory primary elections.

VIII

That the Democratic party is a national organization, and that the Democratic party has not passed any rule or resolution or order excluding Negroes, and has not au- [fol. 18] thorized any of its agencies or branches to pass any resolution, rule, or order excluding Negroes, or forbidding Negroes from becoming members of the Democratic party and that no state convention of the Democratic party has the power by virtue of its being, to pass any such rule, resolution, or order, and that the Democratic party has never conferred power upon the State Democratic convention of Texas to pass any such resolution, rule, or order.

IX

That in said statutory Democratic primary election held on July 28, 1934, nominations were made for United States Senator, United States Congressman, Governor of the State of Texas, senators and representatives to the legislature of the State of Texas and other State and County officers, and that it is a matter of common and general knowledge in Texas that such nominations are equivalent to elections to such office and that by reason thereof, which is a matter of general and common knowledge, since plain-

tiff did not get to vote in said election on July 28th, 1934, plaintiff has been fully and effectively disfranchised by the wrongful acts — defendant in depriving plaintiff of his legal right to vote in said election.

X

That the defendant, Albert Townsend, is a State officer of the State of Texas, whose office functions under and by virtue of the laws of the State of Texas and that he was duly elected, pursuant to the election laws of the State of Texas and that the compensation and salary of the defend-
[fol. 19] ant, Albert Townsend, is paid out of the tax money to which the plaintiff has contributed and is required to contribute by the laws of the State of Texas and that in the performance of his functions and duties as county clerk of Harris County and as conductor of absentee voting under said Article 2956 of the Revised Civil Statutes of Texas, the defendant, Albert Townsend, is a state officer and has only public functions to perform.

That the Democratic State Convention of Texas and the County Democratic Executive Committee of Harris County, Texas, are agencies of government, to whom have been committed statutory powers and authority independent of the Democratic party, and that in the conduct of the statutory primary elections required to be held by Articles 3101 and 3102, all of the officials of said elections are state officers, within the constitution of the United States and the case of Nixon v. Condon, 286 U. S. 73.

XI

That by reason of all the matters and things set out above and by reason of the unlawful, wrongful, and wilful acts of the defendant, Albert Townsend, in depriving this plaintiff of his legal right to cast an absentee vote in said statutory Democratic primary election held on July 28, 1934, this plaintiff has been damaged as aforesaid in the sum of ten dollars ($10.00) which he is entitled to recover from said defendant in this action.

[fol. 20] Wherefore, premises considered, plaintiff, R. R. Grovey, prays the Court that the defendant be duly cited to appear and answer this petition and on final hearing

that plaintiff have judgment against defendant for the sum of ten dollars ($10.00) damages and for costs of this suit.

(Signed (R. R. Grovey, plaintiff. (Signed) J. Alston Atkins, (Signed) A. S. Wells, (Signed) Carter Wesley, Attorneys for plaintiff.

Duly sworn to by R. R. Grovey. Jurat omitted in printing.

[File endorsement omitted.]

[fols. 21 & 22] Citation in usual form, showing service on Albert Townsend, omitted in printing.

[fol. 23] IN THE JUSTICE COURT, PRECINCT No. 1, HARRIS COUNTY, TEXAS

[Title omitted]

DEFENDANT'S ORIGINAL ANSWER—Filed Sept. 24, 1934

To the Honorable Judge of said Court:

Now comes the defendant, Albert Townsend, and files this his original answer in this cause.

I

The defendant demurs generally to the plaintiff's petition and says it is insufficient in law and states no cause of action and of this he prays judgment of the court that plaintiff take nothing, and that defendant be discharged with his costs.

II

For further answer if required, the defendant denies all and singular the allegations in the plaintiff's petition and says they are not true in fact and of this he puts himself upon the country; wherefore, defendant prays that plaintiff take nothing and that he be discharged with his costs.

Wherefore, premises considered, defendant prays that he be discharged with his costs and that he have such other

and further relief as he may be entitled to at law or in equity.

(Signed) E. A. Knipp, Attorney for Defendant.

[File endorsement omitted.]

[fol. 24] In the Justice Court, Precinct No 1, Harris County, Texas

No. 63915

R. R. Grovey

vs.

Albert Townsend

Judgment—Filed Sept. 24, 1934

On this the 24th day of September, 1934, came on to be heard the above entitled and numbered cause and came the plaintiff and the defendant by their respective attorneys and a jury having been waived, and the court having heard the pleadings and argument of counsel, and being of the opinion that the petition in this case states no cause of action, the general demurrer is sustained; and plaintiff declining to plead further, this cause is dismissed and judgment entered for defendant, it is, therefore, accordingly ordered, adjudged and decreed, that the plaintiff take nothing by his suit and that the defendant go hence without day.

All costs are adjudged against the plaintiff for which execution may issue.

(Signed) Campbell R. Overstreet, Justice of the Peace, Precinct No. 1, Harris County, Texas.

Okeh as to form:

(Signed) J. Alston Atkins, Attorney for Plaintiff.
(Signed) E. A. Knipp, Attorney for Defendant.

[File endorsement omitted.]

[fol. 25] IN JUSTICE COURT, PRECINCT NO. 1, POSITION NO. 2, HARRIS COUNTY, TEXAS

[Title omitted]

PLAINTIFF'S MOTION FOR A NEW TRIAL—Filed Sept. 25, 1934

To the Honorable Justice of said Court:

Now comes R. R. Grovey, plaintiff in the above entitled and numbered cause, and moves the court to set aside the judgment of the court rendered herein on September 24, 1934, which judgment sustained the general demurrer of the defendant to plaintiff's petition and dismissed plaintiff's cause of action and gave judgment for the defendant, and to grant plaintiff a new trial for the following reasons, towit:

I

Because said judgment of the court denies the plaintiff the equal protection of the laws and the due process of law as guaranteed to plaintiff by the 14th Amendment to the Constitution of the United States.

II

Because said judgment of the court denies and/or abridges plaintiff's right to vote as guaranteed to him by the 15th Amendment to the Constitution of the United States.

III

Because said judgment of the court is in violation of the rights, privileges, and immunities guaranteed to plaintiff by the 14th and 15th Amendments to the Constitution [fol. 26] of the United States.

IV

Because said judgment of the court is contrary to the law and the facts as disclosed by the record in this cause.

V

Because the court erred in holding that plaintiff did not have the legal right to cast an absentee ballot in the statutory primary election involved in this case, and in failing to

hold that plaintiff did have such legal right to cast an absentee ballot in the statutory primary election involved in this case.

VI

Because the court erred in holding that plaintiff's petition did not state a cause of action against the defendant and in failing to hold that the petition of plaintiff did state a cause of action against the defendant.

VII

Because the court erred in holding that plaintiff was not entitled to recover damages from the defendant for depriving plaintiff of his legal right to cast an absentee ballot in said election and in failing to hold that plaintiff was entitled to recover damages against the defendant for such deprivation.

VIII

Because the court erred in holding that the resolution of the State Democratic Convention of Texas, adopted May 24, 1932 and quoted on page 7 of plaintiff's petition, was effectual to deprive plaintiff of his legal right to cast an [fol. 27] absentee ballot in such election and in failing to hold that said resolution was without legal force and effect to thus deprive plaintiff of his legal right to cast an absentee ballot in the said election.

IX

Because the court erred in holding that the instructions given the defendant by the County Democratic Executive Committee of Harris County, Texas, and mentioned on page 7 of plaintiff's petition, were a valid justification for defendant's depriving plaintiff of his legal right to cast an absentee ballot in said election, and in failing to hold that said instructions were ineffectual and invalid for said purpose.

X

Because the court erred in holding that the classification "race and color" was not entitled to the same protection of the laws of the State of Texas as given to the classifications of "former political views or affiliations" and "membership or non-membership in organizations other than the

political party" as guaranteed by Article 3107 of the Revised Civil Statutes of Texas, and as upheld by the Supreme Court of the State of Texas in the case of Love v. Wilcox, 119 Texas, 256, 28 S. W. (2nd) 515, and in failing to hold that plaintiff was entitled under the 14th and 15th Amendments to the Constitution of the United States to such protection of the laws of the State of Texas.

[fol. 28]

XI

Because the court erred in holding that Sections 2 and 27 of the Bill of Rights (Article 1) of the Constitution of the State of Texas, as quoted on page nine of plaintiff's petition, and as interpreted by the Supreme Court of Texas in the case of Bell et al v. Hill et al, Motion No. 11520, decided July 20, 1934, but not yet officially reported, were not unconstitutional as being in violation of the 14th and 15th Amendments to the Constitution of the United States, and in failing to hold that said sections were unconstitutional.

XII

Because the court erred in holding that the State of Texas had not, by a consistent course of statutory enactments and judicial decisions denied to qualified Negro voters in the State of Texas their legal right to vote as guaranteed and protected by the 14th and 15th Amendments to the Constitution of the United States, and in failing to hold that the State of Texas by a consistent course of statutory enactments and judicial decisions had denied all qualified Negro voters of their right to vote, or abridged the same.

XIII

Because the court erred in holding that the State Democratic Convention of Texas had and has power by virtue of its being, to say who may and who may not be members of the Democratic Party and in failing to hold that said convention had no such power or authority.

XIV

[fol. 29] Because the court erred in holding that Albert Townsend, defendant in this case, was not and is not a state officer of the state of Texas in conducting absentee voting under Article 2956 of the Revised Civil Statutes of

Texas and in failing to hold that said defendant was and is such officer of the State of Texas in conducting such absentee voting.

XV

Because the court erred in holding that the State Democratic Convention of Texas and the County Democratic Executive Committee of Harris County, Texas, and all other officials conducting statutory primary elections required to be held by Articles 3101 and 3102 of the Revised Civil Statutes of Texas were not and are not state officers or agencies within the meaning of the 14th and *14th* Amendments to the Constitution of the United States, and in failing to hold that said convention and committee and officials were and are such state officers or agencies.

XVI

Because the court erred in holding that the statutory primary election involved in this case was not such an election, the right to vote in which is protected and guaranteed against denial or abridgement by the 15th Amendment to the Constitution of the United States, and in failing to hold that said statutory primary election was such an election.

Wherefore, R. R. Grovey, plaintiff, prays the court that the judgment of the court rendered herein on September 24, 1934, be set aside and that plaintiff be granted a new [fol. 30] trial herein.

(Signed) R. R. Grovey plaintiff. (Signed) J. Alston Atkins, (Signed) A. S. Wells, (Signed) Carter Wesley, Attorneys for Plaintiff.

Duly sworn to by R. R. Grovey. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 31] In Justice Court, Precinct No. 1, Position No. 2, Harris County, Texas

[Title omitted]

Order Overruling Motion for a New Trial—Filed Sept. 25, 1934

On this *Sept.* 25th day of September, A. D. 1934, at a regular term of this court, came on to be heard in this cause

the motion of R. R. Grovey, plaintiff, to set aside the judgment of the court rendered against him in favor of the defendant, Albert Townsend, on the 24th day September, A. D. 1934, in the above entitled and numbered cause, and to grant plaintiff a new trial herein, and said motion having been duly heard and considered by the court, the court is of the opinion and finds that said motion for a new trial should be overruled.

It is therefore considered, ordered, and adjudged by the court that said motion for a new trial herein be, and the same is hereby overruled, to which said judgment and ruling of the court, plaintiff then and there excepted, and plaintiff's exceptions were and are allowed.

(Signed) Campbell R. Overstreet, Justice of the Peace, Precinct No. 1, Position No. 2, Harris County, Texas.

OK as to form.

(Signed) J. Alston Atkins, Att'y for Plff. (Signed) E. A. Knipp, Att'y for Deft.

[File endorsement omitted.]

[fol. 32] Bond on petition for certiorari for $20.00, approved Sept. 25, 1934, omitted in printing.

[fol. 33] Bill of costs omitted in printing.

[fol. 34] Reporter's Certificate to foregoing transcript omitted in printing.

[fols. 35 & 36] Justice's Certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 14, 1935

The petition herein for a writ of certiorari to the Justice Court, Precinct No. 1, Harris County, State of Texas, is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.